

**ORDER NO. 78801**

IN THE MATTER OF THE	*	BEFORE THE
INVESTIGATION INTO CHANGES		PUBLIC SERVICE COMMISSION
IN CERTAIN COMMISSION	*	OF MARYLAND
REGULATIONS ON SERVICE		
TERMINATIONS, PAYMENT	*	_____
PLANS, RESIDENTIAL		
CUSTOMER DEPOSITS AND	*	CASE NO. 8919
CERTAIN EMERGENCY		
REGULATIONS.	*	_____

To All Parties of Record and Interested Persons:

**Background**

On September 24, 2003 Staff filed a Request for Clarification (Request) regarding the interpretation of COMAR 20.31.03.03D, which requires two attempts by a utility to make personal contact with a customer before terminating electric or gas service during the wintertime.<sup>1</sup> Staff asserts that the regulations should be interpreted to require a second attempt to make personal contact prior to filing an affidavit with the

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<sup>1</sup> COMAR 20.31.03.03D states: D. Personal Contact with Customer. (1) In addition to the requirements of § A of this regulation, for any termination occurring within the above wintertime period, the utility shall, at a minimum, attempt to make personal contact with the customer twice between the date the notice of termination is mailed to the customer and the date on or after which service is to be terminated. (2) The utility's attempt to make personal contact under this section shall occur on two separate days. (3) The utility's attempt to make personal contact with a customer shall be by either: (a) Telephoning the customer during business hours, or, if no one is home, during the evening after 6 p.m.; or (b) Visiting the premises and leaving a copy of the notice of termination and either a Customer's Rights Pamphlet or a pamphlet which explains the customer winter termination rights, including the Utility Service Protection Program with the customer or a responsible person 18 years old or older at the premises, or if no one is home, leaving a copy of the notice and pamphlets at the premises. (4) The utility shall document each attempt to make personal contact under this section. (5) Financial Assistance. If personal contact is made, the utility shall inform the customer of possible sources of financial assistance and of the availability of alternate payment plans and the Utility Service Protection Program offered by the utility.

Commission.<sup>2</sup> According to Staff, some utilities interpret the regulations to permit a company technician to make a second attempt at personal contact with a customer during the technician's visit to the premises for the purpose of terminating service, after the utility has filed its affidavit with the Commission.

Staff notes that the major differences between the current regulations, which were revised effective January 20, 2003, and the former regulations are: the requirement that the utility make two attempts at personal contact instead of one; that the attempts occur on two separate days; and that the utility document each attempt. According to Staff, one reason supporting its interpretation of the regulations is that the Commission actually changed the regulations to require two attempts at personal contact. Further, a second attempt at personal contact helps ensure that a customer has notice and a chance to avoid a possible termination. Finally, Staff asserts that giving the second notice at the time of termination conflicts with the requirements under COMAR 20.31.03.03A for the utility to file an affidavit with the Commission at least 24 hours before the termination. Staff requests a Commission order clarifying the regulations. The Maryland Office of People's Counsel (OPC) supports Staff's position.

Washington Gas (WG), Pepco Holdings, Inc. (PHI), and Baltimore Gas and Electric Company (BGE) filed comments in opposition to Staff's Request. They assert that Staff's interpretation would result in a requirement of three attempts at personal contact in certain circumstances. In those circumstances where a customer lacks a telephone, Staff's interpretation would require the utility to visit the premises a third time

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<sup>2</sup> COMAR 20.31.03.03A requires gas and electric utilities during the wintertime to certify to the Commission by affidavit, filed at least 24 hours before the termination for nonpayment of bills, that the termination does not constitute a threat to the life or health of the residential occupants. COMAR 20.31.03.03B(3) requires that the affidavit state the dates that personal contact was made or attempted.

after the two attempts at personal contact in order to disconnect gas or electric service in the wintertime. The utilities argue that a second attempt at personal contact is timely if it is made by the date on or after which service is to be terminated. Finally, BGE asserts that Staff's Request amounts to a substantive regulatory change, which as a matter of law requires that it be made pursuant to the State Administrative Procedure Act (APA).

### **Decision**

The Commission has reviewed the record in this matter and finds that Staff's Request should be denied. COMAR 20.31.03.03D was recently revised to require two attempts at personal contact, rather than one, before a utility may terminate gas or electric service during the wintertime. Further, COMAR 20.31.03.03D(2) and (4) respectively require that the two attempts be on separate days and that the attempts be documented. These changes were adopted by the Commission to provide customers additional wintertime protections and to assure that reasonable efforts, in addition to the normal utility notices, are made to avoid service termination.

The record in this matter does not persuade the Commission that requiring a third personal visit to a customer's premises is either consistent with the newly revised regulations or is justified. Further, the Commission's decision means that COMAR 20.31.03.03D(3)(a) and (b) will be applied to all customers in a uniform fashion. Therefore, COMAR 20.31.03.03D is hereby clarified to mean that gas or electric service may be terminated by a utility coincident with the second attempt at personal contact when attempts to contact the customer are made by visiting the premises, provided that the termination does not occur before the date established in the notice of termination. As for the affidavit requirement, COMAR 20.31.03.03A is clear that the affidavit must be

filed with the Commission at least 24 hours before the termination and must contain the required certification. The Commission rejects any argument that these clarifications constitute an amendment to the regulations.

For the reasons stated herein, Staff's Request is denied and COMAR 20.31.03.03A and D are clarified as stated.

By Direction of the Commission,

Felecia L. Greer  
Executive Secretary

FLG:nrm